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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re MEGAN M., a Person Coming Under
the Juvenile Court Law.

B173571
(Los Angeles County
Super. Ct. No. CK 30876)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

DAWN J.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County.

David Doi, Judge. Affirmed.

Janette Freeman Cochran, under appointment by the Court of Appeal, for
Defendant and Appellant.

Larry Cory, Assistant County Counsel, and Judith A. Luby, Senior Deputy
County Counsel, for Plaintiff and Respondent.

Mother appeals from the order terminating her parental rights to Megan.¹ Mother contends the juvenile court lacked substantial evidence to support its finding the exception under Welfare and Institutions Code section² 366.26, subd. (c)(1)(A) did not apply. We affirm.

FACTUAL AND PROCEDURAL SYNOPSIS

I. Detention/Jurisdiction

Megan came to the attention of the Department of Children and Family Services (“the Department”) in October 2002 via a hotline referral of general neglect in her father’s home. Megan had lived with her father in California for several months under an Arizona custody order. Mother lived in Arizona.

The Department detained Megan in a foster home and filed a section 300 petition on her behalf. The Department reported mother had a criminal history and unresolved problems with substance abuse. Both parents had previously failed to reunite with two other children, both of whom had been born with a positive toxicology for drugs. The court ordered monitored weekly visits for mother and gave the Department discretion to liberalize the visits.

In March 2003, the Department reported that Megan had adjusted well to foster care and that mother had only visited once since November, cancelled two subsequent visits and failed to appear for a scheduled December visit, and had failed to establish contact with it.

The court sustained the first amended petition, which alleged in part Megan’s home had been found in a filthy, unsafe and unsanitary condition; she had been found in

¹ This opinion uses the spelling on Megan’s birth certificate.

² All statutory references are to the Welfare and Institutions Code.

a poor state of personal hygiene and wearing dirty clothes; father allowed known drug offenders and drug dealers to frequent the home and used illicit drugs in the home; father had left illicit drugs, drug paraphernalia and weapons accessible to Megan and exposed her to adult sexually explicit magazines; and mother had a history of alcohol and substance abuse which periodically rendered her incapable of providing regular care for Megan.

The May report stated mother was still living in Arizona and the social worker had had trouble contacting mother. Mother said she had enrolled in a drug program, but she had not drug tested. Mother had not resumed contact with Megan until April 2003. In April, the social worker had called father and discovered mother was staying with him and planning to move back to California, but the social worker could not contact mother at the telephone number she had provided nor had mother given the Department her new address. With the concurrence of Megan's attorney, she was placed with prospective adoptive parents, who were maternal relatives and had known Megan all her life.

In June, the court declared Megan a dependent, ordered no reunification services, and set a section 366.26 hearing for October.

II. Section 366.26 Hearing

The hearing was continued to January 8, 2004. The court received in evidence Department reports and heard testimony.

A. The Reports

In October, the Department recommended adoption as Megan's permanent plan. Megan had no known or suspected developmental problems and remained mentally and emotionally stable.

Megan remained bonded to her prospective adoptive parents and referred to them as “daddy” and “mommy,” and openly expressed her desire to remain with them.

Megan had monitored visits with mother twice a month from June 4 to August 20 in the social worker’s office. The social worker observed Megan was closely bonded with mother and appeared happy and excited to visit with mother. Mother brought gifts, family photos, and her male companion to visits. Mother was nine months pregnant, and Megan had many questions about the imminent birth. Mother failed to show for three visits on July 17 and September 14 and 24. Mother said she could not travel from Arizona due to her pregnancy. Megan was disappointed not to see mother.

In December, the Department reported Megan was bonded to and comfortable with her prospective adoptive parents. Before being placed, Megan had been withdrawn and shy, now she was a happy and cheerful little girl. Mother did not visit in November. Mother said her work schedule was very hectic and she planned to see Megan soon.

The Department provided a visitation log kept by the prospective adoptive parents. The log showed mother visited on August 20, December 30, and January 6 but canceled or failed to show for other dates.

B. Testimony

1. Mother

Megan, then age four, had been in mother’s custody continuously for three years.³ During that time, mother fed Megan, played with her, showed her affection, read to her, went to the park with her and sang for her. Mother protected Megan.

Since detention in October 2002, mother had visited about 15 times. Transportation, a 900 mile round trip, limited mother’s visits. The visits ranged from one

³ Based on Megan’s birth certificate and father’s custody date, it appears Megan was less than three years old when she came to California.

to three and a half hours. Megan called her “mommy.” Megan seemed excited to see mother, ran to her, held her and would not let go of her for the first 15 minutes; they established a routine where mother gave Megan a toy at the end of the visit so Megan would not get upset.

During visits, Megan and mother played with the dolls, books and toys mother gave to Megan. They sang and read. Mother gave Megan her love, and they talked about the past, mother’s dog, and how the dog would sing with them.

Mother believed termination of parental rights would have a negative effect on Megan and significantly affect Megan’s emotional state. Megan and mother had been together since Megan’s birth and had a very close bond.

Mother had moved to Arizona to reunite with her sons, but their caretaker returned to California. Mother had established herself in Arizona, filed for divorce, and was starting over. In September 2003, mother successfully completed a drug rehabilitation program in Arizona. Mother was afraid California would take her baby since Megan was already in the system.

2. Social Worker LaNesha James

James testified mother had visited six times between June and December 2003 even though mother had moved back to California in October. Mother and Megan exhibited a close bond during the visits. James compared the log kept by the prospective adoptive parents to the visitation log she kept on her desk calendar, and the dates were the same except for make-up dates.

C. Court Ruling

The court took the matter under submission. On January 30, mother was present in court and informed the court she now lived in Palm Springs, California. The court

continued the matter, ordering both parents to return on February 3. When neither parent appeared on February 3, the court again continued the matter, not wanting to terminate parental rights if the parents were not there.

On March 2, father was present, but mother was not. The court found that mother had failed to regularly visit Megan and that mother visited at least three, but no more than six times, between June and December 2003 and failed to appear for nine prearranged visits. The court also found that, no matter how enjoyable or friendly the visits were, the relationship between mother and Megan did not rise to the level of the daily nurturing care necessary to show a true parent/child relationship.

The court found that although Megan knew mother was her biological mother, it was significant Megan referred to her prospective adoptive parents as “mommy” and “daddy”; they had provided her with excellent care on a daily basis; under their care, Megan had gone from being a withdrawn child to a happy and cheerful little girl; Megan was closely bonded with them; and it was very clear she wanted to remain in their home.

The court found severing Megan’s ties with her parents would not deprive her of a substantial emotional attachment; there was clear and convincing evidence Megan was adoptable; and it would not be detrimental to Megan if parental rights were terminated. The court terminated parental rights.

Mother filed a timely notice of appeal.

DISCUSSION

Mother contends the court erred when it found the section 366.26, subdivision (c)(1)(A) exception to termination of parental rights did not apply. That exception applies only where a parent has “maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.”

A parent must show “the relationship promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with

new, adoptive parents. In other words, the court balances the strength and quality of the natural parent/child relationship in a tenuous placement against the security and the sense of belonging a new family would confer. If severing the natural parent/child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent's rights are not terminated.” (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.)

Although courts have applied a substantial evidence test to the finding under that subdivision, some courts have determined abuse of discretion is the appropriate standard, but noted that the practical differences between the standards are not significant in this situation. (See *In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1351.) The parent has the burden of proving that continuing the parent/child relationship will promote the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home or that termination would be detrimental to the child. (*In re Angel B.* (2002) 97 Cal.App.4th 454, 466.) The court examines the exception on a case-by-case basis, taking into account the many variables which affect the parent-child bond. (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 576.)

“The factors to be considered when looking for whether a relationship is important and beneficial are: (1) the age of the child, (2) the portion of the child's life spent in the parent's custody, (3) the positive or negative effect of interaction between the parent and the child, and (4) the child's particular needs.” (Fn. omitted.) (*In re Angel B.*, *supra*, 97 Cal.App.4th at p. 467.)

Mother argues she showed a beneficial relationship with Megan which outweighed the well being of an adoptive home because Megan, who was almost four and a half when parental rights were terminated, had spent almost her first three years with mother, the social worker observed positive interaction between mother and Megan, who liked visiting, and mother had visited Megan about 15 times and maintained a beneficial relationship despite the difficulties of the distance and her pregnancy.

Though Mother refers to conflicting evidence of visits, she does not address the court's finding she had not regularly visited Megan. The record shows mother missed scheduled visits and did not increase her visits after moving back to California. Mother did not visit in November even though she had moved back to California in October and said she planned to see Megan very soon. Although Megan had lived with mother for about the first three years of her life, the Arizona court gave custody of Megan to father. Moreover, the record shows the relationship between mother and Megan during the last year and a half or so was not parent/child, rather it was more that of a friendly visitor or companion. Besides not showing up for many scheduled visits and not visiting regularly, mother's visits had not progressed beyond the one to three and a half hour monitored visits in a Department office despite the fact the court had given the Department discretion to liberalize the visits. Mother had not had, or even requested, any unmonitored, weekend, or extended visits with Megan.

"The reality is that childhood is brief; it does not wait while a parent rehabilitates himself or herself. The nurturing required must be given by someone, at the time the child needs it, not when the parent is ready to give it." (*In re Debra M.* (1987) 189 Cal.App.3d 1032, 1038.)

There was no indication of any harm, much less great harm, to Megan, who was happy and comfortable with her prospective adoptive parents and wanted to remain in their home, in terminating mother's parental rights. Substantial evidence supports the court's finding the exception did not apply.

DISPOSITION

The order is affirmed.

WOODS, J.

We concur:

PERLUSS, P.J.

JOHNSON, J.